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**From:**

**Sent:** Thursday, January 03, 2013 3:50:10 PM

**To:**

**Cc:**

**Subject:** FW: Employment tax question

Greetings

This arrangement sounds like nonqualified deferred compensation (NQDC). The regs at 31.3121(v)(2)-1(b)(4)(v)(B) describe "window benefits" as benefits provided in connection with impending termination of employment. "For this purpose, a window benefit is an early retirement benefit, retirement-type subsidy, social security supplement, or other form of benefit made available by an employer for a limited period of time (no greater than one year) to employees who terminate employment during that period or to employees who terminate employment during that period under specified circumstances." Although "window benefits" are excepted from the definition of NQDC, there is a special rule for recurring window benefits. "A benefit will not be considered a window benefit if an employer establishes a pattern of repeatedly providing for similar benefits in similar situations for substantially consecutive limited periods of time. Whether the recurrences of these benefits constitutes a pattern of amendments is determined based on the facts and circumstances..." You indicate that these early retirement incentives have been offered since [redacted] Have they been offered continuously - or offered for substantially consecutive limited periods of time? If these are recurring window benefits, then they are considered NQDC, and should be subject to FICA upon retirement (the employer should take the present value of the future benefit into account for FICA purposes upon retirement under section 3121(v)(2)). I hope this is helpful. Let me know if I can be of further assistance.